Supreme Court, U.S.
FILED

05-545 OCT 28 2005

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No._____

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*IN THE*
*SUPREME COURT OF THE UNITED STATES*

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*In re* Isidoro Rodriguez, Esq., as father and next of friend to his 16 year old son, Isidoro Rodriguez-Hazbun,

*Petitioners.*

***********

*To the Respondents:* Chief Justice of the U. S. Supreme Court John G. Roberts; Judges of the U. S. Court of Appeals for the D. C. Circuit and the Special Panel Designated under 28 U.S.C. § 455(b); U.S. District Ct. Judge Richard. W. Roberts; Supreme Court of Virginia; Court of Appeals of Virginia; Fairfax County Circuit Court; Judge Thomas Mann, Fairfax County J&D District Court; U. S. Department of State; U.S. Department of Justice, and National Center for Missing & Exploited Children, its employees, and attorneys.

***********

PETITION FOR TRO/INJUNCTION TO ENJOIN THE VIOLATIONS OF 18 U.S.C. §§ 4, 1001, AND 1204; AND WRIT OF MANDAMUS TO COMPEL COMPLIANCE WITH VIRGINIA CODE § 20-146.25, .29, AND .35, ARTICLE 2 AND 21 OF THE TREATY, AND 42 U.S.C. § 11601(b)(4), TO SECURE VISITATION UNDER THE VALID JOINT CUSTODY SETTLEMENT AGREEMENT.

**********

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On August 1, 2005, although not disqualifying himself as mandated by 28 U.S.C. § 455(a) & (b), Defendant Chief Justice William H. Rehnquist designated a panel under 28 U.S.C. §§ 291-293 to hear and decide this action in lieu of Defendant U.S. Court of Appeals for D.C. Cir.--this four months after the filing of the Petition for TRO/Injunction and Writ of Mandamus for the prompt securing of visitation under the Settlement Agreement, and three months after the filing of the appeal under VA Code & Treaty, and motion to disqualify. On the same date, in support his confirmation Defendant Chief Justice John G. Roberts issued to the U.S. Senate false statements of facts regarding this litigation in violation of 18 U.S.C.. § 1001.

On October 14, 2005, the Designated Panel formed in violation of 28 U.S.C. § 455 (a) & (b), acted outside of their judicial authority under VA Code & Treaty to issue a summary denial of the Petition for TRO/Injunction and Writ of Mandamus and a summary dismissal of the appeal.

Because this "stonewalling" by the Federal Judicial Branch since January 2003 has obstructed a father and son's rights under the Constitution, Treaty, Acts of Congress, and the General Assembly of Virginia in violation of 18 U.S.C. § 1204, & § 4, this case cannot await Certiorari. Thus this Court must enjoin further violation of law, and mandate the prompt securing of visitation for Christmas Vacation 2005 pursuant to the Settlement Agreement.

## QUESTION PRESENTED FOR REVIEW

I. WHETHER PETITIONERS ARE SUFFERING IRREPARABLE HARM BY THE ORDERS ISSUED IN VIOLATION OF 28 U.S.C. § 455 AND OUTSIDE OF DEFENDANTS JUDGE RICHARD W. ROBERTS AND DEFENDANT CHIEF JUSTICE WILLIAM REHNQUIST JUDICIAL AUTHORITY, THUS AS A

MATTER OF LAW THIS COURT MUST FIND REVERSIBLE ERROR AND ISSUE A TRO/PRELIMINARY INJUNCTION TO ORDER REMAND?

II. WHETHER PETITIONERS ARE SUFFERING IRREPARABLE HARM BY THE DESIGNATED PANEL ACTING OUTSIDE OF THEIR JUDICIAL AUTHORITY UNDER ARTICLE 19 OF TREATY, 42 U.S.C. § 11601(b)(4), AND VA CODE § 20.146.35, BY ISSUING AN ORDER IN VIOLATION OF 18 U.S.C. § 4 and § 1204, THUS AS A MATTER OF LAW THIS COURT MUST FIND REVERSIBLE ERROR AND ISSUE A TRO/PRELIMINARY INJUNCTION TO ORDER RESPONDENTS TO CEASE AND DESIST THEIR ILLEGAL POLICIES AND ACTIONS OBSTRUCTING THE FATHER'S PARENTAL RIGHTS IN VIOLATION OF A SETTLEMENT AGREEMENT, VA CODE, AND THE TREATY?

III. WHETHER A WRIT OF MANDAMUS MUST BE ISSUED RASED ON REVERSIBLE ERROR OF RESPONDENTS TO ORDER THEIR PROMPT COMPLIANCE WITH VA CODE § 20146.25, .29 AND .35, AND ARTICLE 2, 21 AND 29 OF THE TREATY SO TO SECURE THE FATHER AND SON'S VISITATION RIGHTS FOR CHRISTMAS 2005 IN ACCORDANCE WITH THE SETTLEMENT AGREEMENT?

IV. WHETHER A WRIT OF MANDAMUS MUST BE ISSUED TO THE UNTIED STATES DEPARTMENT OF JUSTICE, THE UNITED STATES ATTORNEY FOR THE EASTERN DISTRICT OF VIRGINIA, THE UNITED STATES ATTORNEY FOR THE DISTRICT OF COLUMBIA, AND THE FEDERAL BUREAU OF INVESTIGATION TO ORDER THEIR COMPLIANCE WITH THEIR MINISTERIAL DUTIES TO INVESTIGATE AND PROSECUTE THE VIOLATIONS SINCE JANUARY 27, 2003, OF 18 U.S.C. § 4, § 1001, AND § 1204?

## LIST OF PARTIES

Petitioner, Isidoro Rodriguez, Esq., in his own name and as next of friend, a resident of Alexandria, Virginia.

Petitioner, Isidoro Rodriguez-Hazbun is 16 years-old citizen of the United States, resident of Colombia.

Respondent, the Hon. Judge John G. Roberts, Chief Justice of the United States Supreme Court.

Respondent, the Hon. Judges of the United States Court of Appeals for the D. C. Cir., Washington, D.C..

Respondent, the Hon. Chief Judge Jane A. Restani, United States Court of International Trade, New York, NY.

Respondent, the Hon. Chief Judge Paul R. Michel, U.S. Court of Appeals for the Federal Cir., Washington, D.C.

Respondent, the Hon. Judge William H. Stafford, Jr., U.S. District Court for the N. D. Fl., Tallahassee Fl.

Respondent, Hon. Judge Richard W. Roberts, U.S. District Court for D.C., Washington, D.C..

Respondent, the Hon. Judges of the Supreme Court of Virginia, Richmond, Virginia.

Respondent, the Hon. Judges of the Court of Appeals of Virginia, Richmond, Virginia.

Respondent, the Hon Judge Langahorn Keith, Fairfax County Circuit Court, Chancellery, Fairfax, Virginia.

Respondent, the Hon. Judge Thomas Mann, Fairfax County J&D District Court, Fairfax, Virginia.

Respondent, the U. S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Washington, D.C.

Respondent, the United States Department of State, The Office of Children Issues, Bureau of Consular Affairs, Washington, D.C..

Respondent, the National Center for Missing & Exploited Children, its employees, and attorneys, Alexandria, Virginia.

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## STATEMENT OF JURISDICTION

The supervisory authority of this Court is invoked under Article 2 and 11 of the Hague Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980 ("Treaty"), 28 U.S.C. § 455, § 1651(a), and § 1367, 42 U.S.C. § 11601(b)(4), 18 U.S.C. § 4, § 1001, and § 1204, U.S. Sup Ct. Rule 20, VA Code § 20-146.35.

## STATEMENT REQUIRED BY RULE 29.4(b) and ( c )

The Court is informed that 28 U.S.C. § 2403(a) and (b), apply and this Petition has been served upon the Solicitor General of the United States and the Attorney General of the Commonwealth of Virginia. Neither the Federal Courts, nor the Supreme Court of Virginia, nor the Court of Appeals of Virginia, have certified to the Attorney General that the constitutionality of their policies and

practices were called into question under Article of VI, cl. 2 of the Constitution, the Treaty, Act of Congress, VA Code.

## THE RELIEF SOUGHT

Because the orders below obstruct the father and son's rights of visitation under the Settlement Agreement (A-21), outside of the judicial authority granted under VA Code § 20.146.1 *et seq.*, Article 19 of the Treaty, and 42 U.S.C. § 11601(b)(4), and the mandate of 28 U.S.C. § 455, base on the *"void order doctrine"* issue to Respondents: first, a TRO/Injunction to cease and desist noncompliance with VA Code § 20-146.25, .29, and .35, and Article 21 of the Treaty; second, a writ of mandamus to promptly secure the father and son's visitation for their 2005 Christmas Vacation; third, promptly remand the First Amended Verified Complaint for consideration by a jury; and, fourth, mandate an investigation and possible prosecution for violations of 18 U.S.C. § 1204, § 4, and § 1001.

## CONSTITUTION, TREATY, FEDERAL STATUTES, AND VIRGINIA CODE INVOLVED

**The Supremacy Clause United States Constitution, article VI, clause 2, provides:**

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every States shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

**8 U.S.C. § 455-Disqualification of Justice, Judge . . . .**

(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances: (1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding; . . .; (5) He . . .(i) Is a party to the proceeding, . . . . ; (iv) Is to the judge's knowledge likely to be a material witness in the proceeding.

18 U.S.C. § 1204 - International parental kidnapping.

(a) Whoever. . . retains a child (who has been in the United States) outside the United States with intent to obstruct the lawful exercise of parental rights shall be fined under this title or imprisoned not more than 3 years, or both.

18 U.S.C. § 4 - Misprision of felony.

Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both.

18 U.S.C. § 1001 - Statements or entries generally.

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, and judicial branch of the Government of the United States, knowingly and willfully: (1) falsifies, conceals, . . . a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; . ... shall be fined under this title or imprisoned not more than 5 years, or both.

Uniform Child Custody Jurisdiction and Enforcement Act, VA Code § 20-146.25. Temporary visitation. —

A. A court of this Commonwealth that does not have jurisdiction to modify a child custody determination may issue a temporary order enforcing: 1. A visitation schedule made by a court of another state . . . .;

VA Code § 20-146.29. Expedited enforcement of child custody; determination. —C. Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing must be held on the next judicial day after service of the order unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.

VA Code § 20-146.35. Appeals. — An appeal may be taken from a final order in a proceeding under this article in accordance with expedited appellate procedures in other civil cases. . . .

The Hague Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, T.I.A.S. No. 11,670, 19 I.L.M. 1501, *Article 2*

Contracting State shall take all appropriate measures to secure within their territories the implementation of the object of the Convention. For this purpose they shall use the most expeditious procedures available.

*Article 19*

A decision under the Convention concerning the return of the child shall not be taken to be a determination on the merits of any custody issue.

Chapter IV–Right of Access, *Article 21*

An application to make arrangement for organizing or, securing the effective exercise of the rights of access may be presented to the Central Authority of the Contracting States in the same way as an application for the return of a child.

The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfillment of any conditions to which the exercise of those rights are subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights.

The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organizing or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.

**The International Child Abduction Remedies Act, 42 U.S.C. § 11601(a)** The Convention on the Civil Aspects of International Child Abduction, . . . establishes legal rights and procedures for the prompt . . . securing the exercise of visitation rights. . . . (b) **Declarations-The Congress makes the following declarations:**. . . .(4) The Convention and this chapter empower courts of the United States to determine under the Convention and not the merits of any underlying child custody claims.

## STATEMENT OF THE CASE

Isidoro Rodriguez, Esq. ("Rodriguez-father") and his ex-wife, entered a Joint Custody Settlement Agreement on August 1, 1997 ("Settlement Agreement")(A-21), pursuant to the laws of the Republic of Colombia ("Colombia"), Civil Code Title XII, Article 253 and Article 264, *Legis*, ed. 2002, wherein both parents retained visitation and residual

parental rights for their son, Petitioner Isidoro Rodriguez-Hazbun ("Isidoro-son").

No complaint was ever filed by either parent with any court in Colombia or the Virginia to provide jurisdiction to modify, amend or revoke either parents residual and visitation rights under the Agreement (A-21).[2]

However pursuant to VA Code § 20-146.4( c ), and Articles 13 and 20 of the Treaty, when Isidoro-son was 13 year-old he filed a petition to modify the Settlement Agreement (A-21), based on his fundamental rights and "best interests" as a U.S. citizen, his preference to reside in Virginia with Rodriguez-father, and his concern for his safety because of the increasing violence in Colombia against U.S. citizens, *Isidoro Rodriguez-Hazbun v. Amalin Hazbun*, Fairfax County J&D Court (July 13, 2001, No. JJ347050-01-03).[3]

But the Hon. Judge T.S. Ellis III in *Escaf v. Rodriguez*, 200 F.Supp. 2d 603 (E.D. Va. 2002), acted outside of his judicial authority to disregard Isidoro-son right access to the courts in the United States under VA Code § 20.146 1 *et seq.*, Articles 13, 19, 20 and 29 of the Treaty, and 42 U.S.C. § 11601(b)(4), to order Isidoro-son taken from the United States to Colombia by his mother on June 11, 2002. Judge Ellis assumed away Rodriguez-father fundamental and

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[2]On August 26, 1997, a Colombian Court based on its limited jurisdiction (A-23), reconfirmed Rodriguez-father's parental and visitation rights (A-20).

[3]42 U.S.C. § 11603, provides that, "[t]he courts of [Virginia] and the United States district courts shall have concurrent original jurisdiction of actions arising under the [Treaty]."

residual parental rights confirmed under the Settlement Agreement (A-21), and Isidoro-son rights by implementing the policies and practices of Respondents United States Department of State, United States Department of Justice, and independent contractor acting as an "instrumentality of government," the National Center for Missing & Exploited Children ("NCMEC"), its employees and attorneys ("Executive Branch"),[4] to disregard of the Congressional mandated concurrent jurisdiction of Fairfax County J&D Court under the Article 29 of the Treaty and VA Code § 20-146.1 *et seq.*; and, to disregard the exception under Article 13 and 20 of the Treaty, and rights under VA Code § 20-146.1 et seq., to deny Isidoro-son's rights wishes and "best interest" as a 13 year old boy deciding to stay in Virginia, deny the existence of "zone of war" in Colombia, and deny controlling *stare decisis* fundamental parental rights.[5]

However, consistent with the *stare decisis* in the above cited case, Associate Justice Sandra O'Conner granted a stay of Judge Ellis' order on May 23, 2002, S. Ct. Docket No. 01A930, despite the denial of previous motions to the

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[4]The NCMEC under a Cooperative Agreement has received more than $100 million in grants and awards from the Federal government since 1999, to paid provide the administrative process in the United States for petition to secure international visitation pursuant to Article 21 of the Treaty and 42 U.S.C. § 11601(a).

[5]In *Troxel v. Granville*, 530 U.S. 57 (2000), this Court confirmed that the Due Process Clause of the Fifth Amendment guarantees more than fair process, because it has a substantive component that provides heightened protection against government interference with fundamental rights and liberty interests, including the interest of a parent in the, "care, custody, and control of their children–[as] perhaps the oldest of the fundamental liberty interest recognized." *Id.* at 63.

U.S. Court of Appeals for the 4th Circuit, and by the former 4th Circuit Court Judge, Chief Justice William Rehnquist.

But on June 10, 2002, the full U.S. Supreme Court refused to maintain the stay or provide an expedited hearing pursuant to Articles 2 and 11 of the Treaty. One day afterwards Isidoro-son was taken from the United States to Colombia. Four months later the 4th Circuit affirmed Judge Ellis III's order, *Hazbun v. Rodriguez*, 52 Fed. Appx. 204 (4th Cir. 2002), cert. den. U.S. S.C. Docket No. 02-1268, April 28, 2003.

On January 27, 2003, based on the above record of negligent omission outside of their judicial and ministerial authority under Article 19 of the Treaty, and 42 U.S.C. § 11601(b)(4), VA Code § 20-146.35, by both the Federal Executive and Judicial Branches of government collusion in total disregard of the rights under the Agreement (A-21) and Treaty and VA Code, Rodriguez-father and Isidoro-son filed a Notice of Federal Tort Claims, and then a complaint for the issuance of a Writ of Mandamus to the Executive Branch to promptly secure visitation in accordance with Articles 2 and 21 of the Treaty and VA Code § 20-146.25 and .29, and for damages under various federal causes of action ("*Father/Son I*"), *Isidoro Rodriguez, father of Isidoro Rodriguez-Hazbun v. National Center for Missing and Exploited Children et al.*, U.S.D.C. Dist. Ct., No. 03-0120 (Judge Richard W. Roberts).

In response to *Father/Son I*, Respondents did compound their earlier abuse of their judicial and ministerial authority under Article 19 of the Treaty, and 42 U.S.C. § 11602(b)(4), by violating 18 U.S.C. § 1204 in obstructing Rodriguez-father's parental and visitation rights under VA Code § 20-146.25, .29, and .35, and Articles 2, 21 and 29

of the Treaty.[6] From January 27, 2003 to March 31, 2005, the following illegal acts by Respondents have occurred in violation of 18 U.S.C. § 1204, § 4, and § 1001:

(1) The U.S. Court of Appeals for D.C., including Chief Justice John G. Roberts, for over two years have refused to compel the Executive Branch to promptly secure visitation (A-16, and A-17).

(2) The Federal Courts, Fairfax J&D Court, Fairfax County Circuit Court, Virginia Court of Appeals and Virginia Supreme Court in their respective order (A-13, A-14, A-15), have permitted the Executive Branch to file false pleadings as to both law and facts,[7] have denied due process and equal protection of the laws,[8] have delayed and/or stayed all proceedings to fail to comply with their duty to promptly

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[6]*Article 29* of the Treaty states, "[it] shall not preclude any person, . . . who claims there has been a breach of . . . [visitation] within the meaning of . . . Article 21 from applying directly to the judicial or administrative authorities . . . whether or not under the [Treaty]."

[7]While being permitted by Judge Richard W. Roberts and the Virginia Courts to filed false pleadings as to its duty under the Treaty and Va Code, as well as the legal status of the NCMEC as an "instrumentality of government," the Executive Branch sought from Congress amendments to include the NCMEC under the protection of the Federal Torts Claim Act in March 2004.

[8]The Virginia Court of Appeals and Virginia Supreme Court, acted outside of their judicial capacity to affirm Judge Langahorn Keith's imposition of a $1,000.00 sanction against Isidoro-son for his issuing of witness subpoenas to the NCMEC for their appearance at the hearing appealing the denial of visitation.

secure visitation,[9] have denied any appeal of their respective orders, and have acted outside of their judicial capacity under Article 19 of the Treaty and 42 U.S.C. § 11602(b)(4), to strip Rodriguez-father's of his parental rights under the Settlement Agreement (A-21).

(3) Acting in negligent omission of his supervisory authority as Circuit Justice for the D.C. and 4th Circuits, former Chief Justice William W. Rehnquist repeatedly permitted the lower the courts noncompliance with their duty to secure visitation under the Treaty and VA Code, *see* U.S. Supreme Court Docket No. 02-1268 (*see* Docket No. 03-301; No. 04-454; and No. 04-724).

(4) The Executive Branch filed a Virginia Bar Complaint (VSB Docket #04-052-1044, October 10, 2003), in violation of Article 29 of the Treaty and the First Amendment right to petition for grievances, alleging that Rodriguez-father was filing of "frivolous lawsuits in federal and state courts against them."

(5) The Executive Branch used their influence with the media to publish an erroneous report that Isidoro-son and Rodriguez-father's litigation was only about a "[f]ather's lawsuit" for custody, and not that the gravamen of their complaint was to expeditiously secure visitation under the Treaty and VA Code, *see Washington Legal Times*, About a Boy, by Tom Schoenberg, dated April 14, 2003.

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[9]Based on the Executive Branch's policies and influence, for more than four years Fairfax J&D Court, and Fairfax County Court, Chancellery Div., has stayed Isidoro-son' first in time petition, including the duty to promptly secure visitation.

(6) In negligent omission of their ministerial duties the Office of the United States Attorney for the E. D. of Virginia, the Office of the United States Attorney for D.C., and the FBI refused to investigate the alleged violations of 18 U.S.C. § 4, § 1001, and § 1204; and the Solicitor General of the United States and the Office of Attorney General of the Commonwealth of Virginia has refused to date to compel their the Executive Branch to comply with their duty to secure visitation rights under the Treaty and VA Code. *see also* Congressional Concurrent Joint Resolution 293, May 23, 2000.

Therefore based on the above record, on March 7, 2005, a First Amended Verified Complaint was filed (*"Father/Son II"),* adding Defendants and Counts for violation 18 U.S.C. § 4, § 1001, and § 1204, the Racketeer Influence and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961-68, and *Bivens v. Six Unnamed Agents of the Federal Bureau of Investigation*, 403 U.S. 388 (1971).

Pursuant to 28 U.S.C. § 455(a) and (b), a motion to disqualify Defendant Judge Richard W. Roberts for his involvement in the conspiracy since January 27, 2003, in violation of 18 U.S.C. § 1204.

Defendant Judge Richard Roberts issued an order on March 31, 2005, after Isidoro-son became 16 years old, wherein he refused to disqualify himself as required under 28 U.S.C. § 455, disregarded the limits on his judicial authority under Article 19 of the Treaty, and 42 U.S.C. § 11601(4), dismiss *Isidoro I*, declared moot all outstanding motions pending since January 27, 2003, and struck *Isidoro II* (A-13)

On April 6, 2005, a Petition for TRO/Injunction and Writ of mandamus was filed with Defendant U.S. Court of

Appeals for D.C.. On May 27, 2005, a Notice of Appeal was filed. Pursuant to 28 U.S.C. § 455, a motion to disqualify the Defendant U.S. Court of Appeals for D.C. was filed.

On August 1, 2005, although not disqualifying himself as mandated by 28 U.S.C. § 455(a) & (b), Defendant Chief Justice William H. Rehnquist designated Respondents the Hon. Chief Judge Jane A. Restani, United States Court of International Trade; the Hon. Chief Judge Paul R. Michel, U.S. Court of Appeals for the Federal Cir.; and Senior District Judge William H. Stafford, Jr., U.S. District Court for the N. D. Fl., ("Designated Panel"), under 28 U.S.C. §§ 291-293 to hear and decide this action in lieu of Defendant U.S. Court of Appeals for D.C. Cir.

On the same date, the Designated Panel stayed consideration of the TRO/Injunction and Writ of Mandamus filed on April 6, 2005, by issuing an order to consolidate it with the appeal (A-12).

Also on August 1, 2005, in support his confirmation Defendant Chief Justice John G. Roberts issued to the U.S. Senate a false statements (See Exhibit 1, Motion to Disqualify the Hon. Chief Judge), *Isidoro II* as being only about a father's lawsuit for custody, and not about the expeditious securing of visitation under the Treaty and VA Code, and for damages for Respondents unlawful acts in violation of VA Code, the Treaty, 18 U.S.C. § 4, § 1001, § 1204, §§ 1961-68, and *Bivens*.

After obstructing Isidoro-son and Rodriguez-father's right of visitation for over three years in violation of 18 U.S.C. § 1204, the Executive Branch filed a motion to dismiss the consolidated action asserting that their obligations under Articles 2, 13, 20, 19, 21 and 29 of the Treaty

ended upon Isidoro-son's 16th birthday. The Designated Panel ordered it filed out of time on August 5, 2005.

On October 14, 2005, the Designated Panel issued a denied of the Petition for TRO/Injunction and Writ of Mandamus, and summary disposition of the appeal (A-1).

## DISCUSSION

### I. REASONS FOR GRANTING THE !SSUANCE OF TRO/INJUNCTION

Rodriguez-father and Isidoro-son must establish the following prerequisites in order to receive a temporary restraining order and injunction that there is: (1) a substantial likelihood that they will ultimately prevail on the merits; (2) that they will suffer irreparable injury unless the injunction issues; (3) that the threatened injuries to them outweigh whatever damage the proposed injunction may cause to the Respondents; and, (4) that the injunction, if issued, would not be adverse to the public interest. *Sofarelli v. Pinellas County*, 931 F.2d 718, 723 (11th Cir. 1991).

**A. Based on the *void order doctrine* there is reversible error and a substantial Likelihood that Rodriguez-father and Isidoro-son will ultimately prevail upon the merits for violation of the VA Code and Treaty.**

i. Lack of meaningful access to impartial Courts

Access to an impartial court, Chief Justice Marshall declared in *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803), is,

> [T]he very essence of civil liberty certainly consists in the right of every individual to claim the protec

tion of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection.

Subsequently, this Court has left no doubt that access to impartial court is a fundamental right guaranteed by the U.S. Constitution to secure rights under: (a) The First Amendment Petition Clause - *Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731, 741 (1983); (b) The Fifth Amendment Due Process Clause - *Walters v. National Assn. of Radiation Survivors*, 473 U.S. 305, 335 (1985); ( c ) The Fourteenth Amendment Equal Protection Clause - *Pennsylvania v. Finley*, 481 U.S. 551, 557 (1987); and, (d) The Fourteenth Amendment Due Process Clause - *Wolff v. McDonnell*, 418 U.S. 539, 576 (1974); *Terry E. Butera v. District of Columbia et al.*, 235 F.3d 637 (2001); *see* Christopher *v. Harbury*, 536 U.S. 403, Sct. 01-394 (2002).

Directly on point as to the right of action against the NCMEC, its employees and attorneys, the right of access to justice is so fundamental that this Court has held that the Fourteenth Amendment includes, "the duty of every State to provide, in the administration of justice, for the redress of private wrongs." *Missouri Pacific Ry. Co. v. Humes*, 115 U.S. 512, 521 (1885).

a. Noncompliance with 28 U.S.C. § 455.

The force of Congress' mandate to assure access to an impartial court is expressed in 28 U.S.C. §455(e) which states: "No justice, judge, or magistrate judge shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b)." Clearly, Congress does not want justices hearing cases to which their impartiality is questioned or they are a party.

Thus the disqualification of both former Chief Justice William W. Rehnquist and Judge Richard W. Roberts is governed by federal statute found at 28 U.S.C. §455(a) and (b), which mandates this justice and judge, shall disqualify themselves when either their impartiality is place at issue or when they are a party to the proceeding. Here, during the past three years of litigation to secure visitation right under the Treaty and VA Code both Judge Richard W. Roberts and former Chief Justice impartiality have been repeatedly placed into question, and they are a "party to the proceeding" in *Father/Son II*. Therefore, they were to "disqualify themselves" from rendering any decision. But this was not done.

However, neither Judge Richard Roberts nor former Justice W. Rehnquist can invoke the *Rule of Necessity* as the factual predicate present in *United States v. Will*, 449 U.S. 200, 213 (1980), is not present here. This is because in *Will*, this Court found that:

> In federal courts generally, when an individual judge is disqualified from a particular case by reason of § 455, the disqualified judge simply steps aside and allows the normal administrative processes of the court to assign the case to another judge not disqualified. *Id.* at 212.[10]

Since reassignment was not done, the order of March 31, 2005 (A-13), the order forming the Designating

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[10]Given the failing health of the Chief Justice in the Summer of 2005, Associate Justice Stevens took over must of the duties of the Chief Justice. Thus it is difficult to understand how the Chief Justice issued certifications in compliance with 28 U.S.C. §§ 291-293.

Panel, and the order of the Designated Panel (A-1), are void pursuant to the *void order doctrine*. This Court has held that a void can be attacked in any proceeding where the judgment come into issue. *Pennoyer v. Neff*, 95 US 714 (1877); and, *Jordon v. Gilligan*, 500 F.2d 701, 710 (6th Cir. 1974)("a void judgment is no judgment at all and is without legal effect")(Emphases added).

Thus because of the refusal to disqualify pursuant to 28 U.S.C. § 455, there has occurred repeated denial of access to the court for an impartial meaningful review of the Executive Branch's policies and action for the past three years, and the orders are void.

b. The Judicial Branch has violated 18 U.S.C. §1204, §4, and § 1001.

Although there is no case law on the issue of the obstructing of justice by denying access to the court to petition the government regarding criminal activity and for an impartial and meaningful hearing under the Treaty and VA Code § 20-146.1 *et seq.*, it is clear from the wording of 18 U.S.C. §§ 4, 1001, and 1204, that compliance is not a prerogative of the courts under these criminal statutes.

Thus the impartiality of the Designated Panel is challenged not only based on the Defendant Chief Justice not disqualify himself to select judges under his control as Circuit Judge of the D.C. Circuit, but too by his selecting at least one of the Judge that served as his law clerk, and selecting another judge married to the Defendant in *Foretich v. United States*, Civ. Action No. 97-0929 (D.D.C. Jan 13, 2002), and selecting another Judge that works very closely with the Executive Branch. Obviously more impartial judges have to be selected under the criminal statute.

ii. Due to their illegal acts Respondents have an on going obligations under the Treaty

Due process in access to an impartial court consists of "those fundamental principles of liberty and justice which lie at the base of all our civil and political institutions," *Hurtado v. California*, 110 U.S. 516, 535 (1884)(Emphasis added); *Ingraham v. Wright*, 430 U.S. 651, 673 (1977), quoting *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923).

The record here establish that Rodriguez-father and Isidoro-son have been denied for at least the past three years access to an impartial court to compel the Executive Branch to secure promptly their visitation rights under the Agreement (A-21), *see also*, 42 U.S.C. § 11602(7), pursuant to VA Code §§ 20-146.25, .29, and .35 and Articles 21 of the Treaty.

Therefore the Designated Panels holding that the "time of the events underlying this petition has passed," (A-2), is legal sophistry to assume away the delaying tactics of Respondents. Furthermore, it confirms the pattern and practices of the D.C. Circuit demonstrated in *Foretich v. United States*, Civ. Action No. 97-0929 (D.D.C. Jan 13, 2002), reversed on appeal, 351 F3d 1198 (D.C.C.A. No-02-5224, December 16, 2003), to violate the civil rights of fathers by staying proceeding until a statute has run and lost its effect.[11]

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[11]In *Foretich id*, the courts delayed consideration of the merits of the father's claim filed in 1997, until after the minor child had reached her 18th birthday, and the father's rights ended.

But under Articles 2 and 19 of the Treaty, and 42 U.S.C. § 11601(b)(4) of the Treaty, Respondent Federal and Virginia Courts were limited in their judicial capacities to only act promptly to determine rights under the Agreement (A-21), including visitations.

Neither Judge Ellis III, nor the Supreme Court of Virginia, nor Judge Richard W. Roberts, nor the Designated Panels have any judicial authority to adversely affect and obstruct Rodriguez-rights residual and visitation rights under the Agreement (A-21), as they have done for the past three years. Therefore the orders (A-1, A-13, A-14, A-15), stripping Rodriguez-father parental rights under the Settlement Agreement(A-21), are void.[12]

Therefore by attempting to place a veil of legality on Respondents acts by citing Judge Ellis III order (A-10) as a valid order that stripped Rodriguez-father's of his parental right, the Designated Panel surreally establish their violating meaningful access to an impartial courts by their acting outside their authority and violating 18 U.S.C. § 1204 and § 4, in seeking to obfuscate the violations of Article 2, and 19 of the Treaty, and 42 U.S.C. § 11601(b)(4) for the past three years by Respondents' refusal to secure the rights of visitation under the Settlement Agreement (A-21), pursuant to the Article 21 of the Treaty and VA Code § 20-146.25 and .29.

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[12]The duty of the Executive Branch to enforce the terms of the Agreement (A-21), and secure visitation could only be terminated if Rodriguez-father parental rights had been altered by a Colombian Court if a new action had been filed to give it jurisdiction under the Colombian Civil Code. This never occurred.

The Designated Panels' efforts to close the courthouse doors to prevent Rodriguez-father and Isidoro-son from walking through them must be rejected as threatening the ability of this Supreme Court to perform its constitutional functions under VA Code and Treaty. This is particularly true upon an analysis of both Judge Richard W. Roberts order (A-13), and the Designated Panel's order (A-1), issued to obstruct with Rodriguez's parental rights in violation of 18 U.S.C. § 1204.

It is for this reason that based on Respondents' ongoing violation of their ministerial and judicial duty, as well illegal acts since January 27, 2003, Respondents' obligation to secure visitations under Article 21 of the Treaty has not run, although Isidoro-son become 16 years-old on March 10, 2005. The duty under the Treaty is tolled and remains in effect under VA Code § 20-146.25 and .29, until Isidoro-son is 18 years old.[13]

Consequently, it is more then probable that once this matter is promptly remanded, based on the extensive record of the intentional violation of the Treaty and VA Code by Respondents in furtherance of their illegal polices, Rodriguez-father and Isidoro-son will prevail before a jury and impartial court.

B. **Rodriguez-father and Isidoro-son will continue to suffer irreparable injury unless the injunction is issued to stop violations of 12 U.S.C. § 4 and § 1204.**

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[13]The Designated Panel disregarded that under VA Code § 20-146.1, Respondents duty to secure visitation continues until Isidoro-son has attained eighteen years of age.

The second prerequisite for entry of a temporary injunction is the "irreparable injury" which Rodriguez-father and Isidoro-son have already and will continue to suffer if the TRO and preliminary injunction are not entered against Respondents policy and acts in violation of the Treaty and VA Code.

This Court has held that even a minimal infringement upon Constitutional civil rights, constitutes irreparable injury sufficient to justify injunctive relief, *Elrod v. Burns*, 427 U.S. 347 (1976).

The record shows that in furtherance of unauthorized policies and practices the Respondents have acted in collusion to disregard their judicial and ministerial duties under the First, Fifth, Ninth, and Fourteenth Amendments to the Constitution, VA Code § 20-146.1 *et seq.*, the Treaty, and 18 U.S.C. § 1204, *see* Congressional Resolution 293 of March 2000. "There is no crueler tyranny than that which is exercised under cover of law, and with the colors of justice ..."– *U.S. vs. Jannottie*, 673 F.2d 578, 614 (3d Cir. 1982).

If Respondents are permitted to disregard with impunity the substantive fundamental rights of citizens of the United States, as well as the rights mandated by both Congress and the Virginia General assembly under the Treaty, Federal and Virginia Code--including the ability to challenge their actions--then the Courts have unlimited power–and this in itself is a violation of the Constitution and the right of all citizens of the United States.

Here, the "irreparable Injury" is found in the extensive record establish Respondents violating the right of meaningful access to impartial courts to enforce the Agreement's visitation rights pursuant to the Treaty and VA

Code, and obstructing of parental rights in violation of 18 U.S.C. § 1204 for almost three years.

Accordingly, if the temporary injunction is not issued, Rodriguez-father and Isidoro-son will continue to suffer "irreparable injury" by the loss civil rights as citizens of the United States in violation of the Treaty, VA Code, and 18 U.S.C. § 4, § 1001, and § 1204.

C. **The Threatened Injuries to Rodriguez-father and Isidoro-son Outweighs Whatever Damage the Proposed Injunction May Cause to Respondents.**

The opposing parties are the Executive Branch and Federal and State Courts, which as the extensive record of the past three years establish violation of the right to have the Executive Branch secure visitations by an impartial court in accordance with the Agreement (A-21), the Article 21 of the Treaty and VA Code § 20.146.29.

The injuries to Rodriguez-father and Isidoro-son civil rights are real and based on the ongoing record of violation of law, they will endure unless stopped by this Court. Thus, the damages by the issuance of the TRO/Injunction are nonexistent for ending the obstructing of Rodriguez-father's parental rights in violation of 18 U.S.C. § 1204.

D. **The TRO/Injunction, If Issued, Would Not Be Adverse to the Public Interest**

Finally, based on the extensive record developed during the past three years establish Respondents violating the right of meaningful access to impartial courts to secure the enforcement of the Agreement's visitation rights (A-21), pursuant to the Treaty and VA Code, and end the obstruct

ing of parental rights in violation of 18 U.S.C. § 1204, not only would issuance of the TRO/Injunction "not be adverse to the public interest," but quite the contrary is true.

Here, it is in the public interest to insure that the Federal and Virginia's courts are open to all to resolve disputes with the Executive Branch – particularly so when the disputes involve the very sensitive area of family relations consistent with the express will of Congress and the General Assembly of Virginia under the Treaty and VA Code.

## II. THE REASONS WHY THE WRIT OF MANDAMUS SHOULD BE ISSUED

Actions in the nature of mandamus can be brought against government officials in this court 28 U.S.C. § 1651. The writ will issue only to compel the performance of ministerial and judicial duties. *Work v. United States ex Rives*, 267 U.S. 175, 45 S.Ct. 252 (1925). Although mandamus cannot be used to compel a discretionary function, it can be used to correct an abuse of discretion. *Haneke v. Secy Health, Education & Welfare*, 535 F.2d 1291 (D.C. Cir. 1976).[14]

In order for a writ of mandamus to issue, the act required must be "clear and indisputable." *Kerr v. United States Dist. Ct.*, 426 U.S. 394, 96 S.Ct. 2119 (1976). There must be a legal duty to be performed and it must be "so plainly prescribed as to be free from doubt." *Naporoano*

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[14]"Unlimited power is apt to corrupt the minds of those who possess it; and [it is there we know], **that where law ends, tyranny begins.**" Lord Chatham (William Pitt) to the British House of Lords in January 1770. (Emphasis added)

*Metal & Iron co. V. Secy of Labor of the United States*, 529 F.3rd 537 (3rd Cir 1976).

Sovereign immunity does not bar an action seeking a writ of mandamus where, as here it is alleged that the federal official is or has acted unconstitutionally and in noncompliance with the Treaty and statutory authority. *Washington Legal Found. V. U.S. Sentencing Comm'n*, 89 F.3rd 897, 901-902 (D.C. Cir. 1996); *Haneke v. Secy Health, Education & Welfare*, 535 F.2d 1291 (D.C. Cir. 1976).

> **One critical consideration in determining the propriety of resort to a writ of mandamus is the question of alternative remedies; the writ is usually denied when such alternatives exist.** (Emphasis added)

*Cartier v. Secretary of State*, 506 F.2d 191 (D.C. Cir. 1974)(internal citations omitted); *see also Heckler v. Ringer*, 466 U.S. 602, 616 (1984)(a writ of mandamus "is intended to provide a remedy for a plaintiff only if he has exhausted all other avenues of relief . . . .").

The extensive record confirms Respondents violating the right of meaningful access to impartial courts to enforce the Agreement's visitation rights pursuant to the Treaty and VA Code, and their obstructing with parental rights in violation of 18 U.S.C. § 1204. Therefor despite having under VA Code and the Treaty an undisputable right to the securing of visitation, Rodriguez-father and Isidoro-son have been denied their civil rights by the repeated acts of Respondents outside of their judicial and ministerial authority, *Carter v. Seamans*, 411 F.2d 767 (5th Cir. 1969). Thus, obviously there is no adequate alternative remedy available. *Holmes v. United States Bd. Of Parole*, 541 F.2d 1243 (7th Cir. 1976), making mandamus appropriate to

prevent further irreparable harm to rights under the Constitution, Treaty, Federal and VA Code.

The orders of Respondent (A-1, A-2, A-3, and A-4), are not only void for violation of VA Code, Article 19 of the Treaty, and 42 U.S.C. § 11601(b)(4), but too, Defendant Judge Richard W. Roberts and defendant Chief Justice William Rehnquist refused to disqualify themselves, as mandated by 28 U.S.C. § 455(b)(5)( i )(ii).

Also substantial rights under the Treaty, and VA Code, have been violated by Respondents repeatedly acting outside of their judicial and ministerial authority by disregarding the substantive rights of Rodriguez-father and Isidoro-son to visitation denying them of their fundamental rights in violation of the Rules Enabling Act, 28 U.S.C. § 2072(b), *Prince v. Massachusetts*, 321 U.S. 158 (1944),[15] *Troxel v. Granville*, 530 U.S. 57 (2000); *Reno v Flores*, 507 U.S. 292, 301-302 (1993): *Franz v. United States*, 707 F.2d 582 (D.C. Cir. 1983);[16] *see also, Nwaokolo v. INS*, 314 F.3d

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[15] In *Prince*, this Court stated that there is a constitutional dimension to the right of parents to direct the upbringing of their children, "[i]t is cardinal with us that the custody, care and nurture of the child resides first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." *Id.* at 166

[16] In *Franz*, the D.C. Court of Appeals recognized the fundamentally constitutionally protected liberty interest of a father in the society and companionship of and the right to raise his minor child to assure the development of "parental and filial bonds free from government interference." *Id.* at 595. Thus Rodriguez-father has a fundamental right to assure Isidoro-son the benefits, opportunities, and duties of his U.S. citizenship, *Reid v. Covert*, 354 U.S. 1

303 (December 27, 2002), where it is held that even non-U.S. citizen parents have a right to protect their U.S. citizen child from danger.[17]

Clearly from the record of the past three years, and the summary order of the Designated Panel (A-1), no alternative forum exists for Rodriguez-father and Isidoro-son to enforce their fundamental rights under the Constitution, the Agreement (A-21), Treaty, and VA Code, making mandamus is clearly appropriate.

## CONCLUSION

In violation of 18 U.S.C. § 1204 & § 4, for over three years Rodriguez-father and Isidoro-son have been illegally denied their right under the Treaty and VA Code to have Respondents secure visitations pursuant to the terms of the Agreement (A-21). Consequently, since his being shanghaied to Colombia on June 11, 2002, by acts of respondent outside of their respective judicial and ministerial authority, Isidoro-son has illegally been deprived of his rights as a United States citizen.

Thus Isidoro-son and Rodriguez-father's petition for a TRO/Injunction and Writ of Mandamus are not based on any disrespect for the judicial branch, but a belief in our Constitution, a love our county, and a concern after 30 years as a civil rights litigator for our nation's future,

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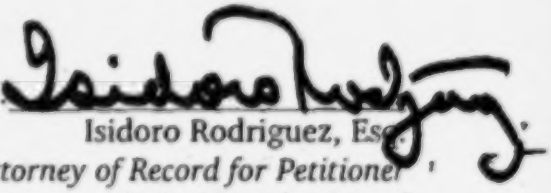
(1957), *Yaser Esam Hamdi et al. v. Rumsfeld, et al.*, 4CCA 02-7338 (January 8, 2003); and, *Friedrich v Friedrich*, 983 F.2d 1396 (6th Cir. 1993), and *Id*, 78 F.2d 1060 (6th Cir. 1996).

[17]In *Nwaokolo*, the 7th Circuit denied the deportation of a mother based on the fundamental rights of her U.S. citizen child to be safe from the high probability of harm. *Id.* at 314

because in this action the civil rights of U.S. citizens have been violated for over four years by the disregard mandate of access to the courts for independent review of the policies of the Executive Branch by impartial Article III Judges, *see, Martinez v. Lamagno et al*, 515 U.S.417 (1995).

Thus Respondents must be ordered to cease and desist illegal policies and actions, an order issued to secure visitation under the Agreement (A-21), for Christmas 2005 and other Vacations in 2006, and 2007, until he is 18 years-old, and the *Father/Son II* remanded for a trial by jury.

Respectfully submitted,



By: _____
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# APPENDIX

UNITED STATE COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 05-5130
September Term, 2005
O3cvOOl20

Filed on: (Seal-Oct. 14 2005)

In re: Isidoro Rodriguez and as father and next of friend of his 16 year old son Isidoro Rodriguez-Hazbun and Isidoro Rodriguez Hazbun,

Petitioners,

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Consolidated with 05-5202

BEFORE: Michel, Chief Judge,* Restani, Chief Judge,** and Stafford, Senior District Judge**

ORDER

Upon Consideration of (1) Rodriguez's petition in No. 05-5130 "for temporary restraining order or preliminary injunction and writ of mandamus;" (2) Rodriguez's motion for expedited consideration of the petition in No. 05-5130; (3) Rodriguez's motion in No. 05-5130 "to disqualify the judges of the court of appeals from these matters and for the appointment of a special panel selected from outside of the District of Columbia and Fourth Circuits;" and (4) certain private appellees' and the Virginia State appellees' motions in No. 05-5202 for summary affirmance, the responses to each of these motions if submitted, and the replies if submitted, it is

ORDERED that Rodriguez's petition for a temporary restraining order or preliminary injunction and writ of mandamus and his motion for expedited consideration thereof be, and hereby are, denied as moot because (1) the time of the events underlying his petition has passed; and (2) we reach the merits of whether the district court abused its discretion when it declined to issue a writ of mandamus in disposing of the motion for summary affirmance; and (3) expedited consideration has been granted. It is

FURTHER ORDERED that Rodriguez's motion for disqualification and "appointment" be, and hereby is, denied as moot because Chief Justice William H. Rehnquist[1] designated the judges of this special panel, each of whom sit outside of the U.S. Court of Appeals for the District of Columbia Circuit and the U.S. Court of Appeals for the Fourth Circuit, to hear and decide Rodriguez's appeal. It is

FURTHER ORDERED that the motions for summary affirmance be, and hereby are, granted for the reasons set forth in the accompanying memorandum. We conclude that briefing and oral argument would not assist the court in deciding Rodriguez's consolidated appeal. Additionally, summary disposition of this appeal is appropriate because on every issue, the merits are so clear as a matter of law that no substantial question regarding their proper disposition exists. See Tax Davers Watchdog. Inc. v. Stanley, 819 F.2d 294, 297(D.C. Cir. 1987) (per curiam).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the

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[1]Chief Justice Rehnquist died on September 3, 2005 after having served as Chief Justice of the United States since September 26, 1986.

mandate in Appeal No. 05-5202, the direct appeal, until seven days after resolution of any timely petition for rehearing.[2] See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
John T. Haley
Deputy Clerk

*Chief Judge Michel is a judge of the United States Court of Appeals for the Federal Circuit, sifting by designation pursuant to 28 U.S.C. § 291(a).

**Chief Judge Restani is a judge of the United States Court of International Trade, sifting by designation pursuant to 28 U.S.C. § 293(a).

***Senior District Judge Stafford is a judge of the United States District Court for the Northern District of Florida, sitting by designation pursuant to 28 U.S.C. § 292(d).

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[2]As No. 05-5130 is an original action filed in the United States Court of Appeals for the District of Columbia Circuit, no mandate will issue

No. 05-51 30, et. al., In re Rodriguez

## MEMORANDUM

### I. BACKGROUND

Isidoro Rodriguez ("Rodriguez") brought suit in the United States District Court for the District of Columbia on behalf of himself and his minor son, Isidoro Rodriguez- Hazbun ("Isidoro"), against the National Center for Missing and Exploited Children, et. al.,[3] alleging that the defendants conspired to deprive him of his constitutional rights under the First, Fifth, and Ninth Amendments and civil rights under 42 U.S.C. §§ 1985(3) and 1986 (2000) and are also liable under the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 2671-2680 (2000). Among other relief, he sought money damages, costs, and attorneys' fees. He also petitioned for a writ of mandamus to "keep [Isidoro safe while in Colombia, assure access and unhindered communication with Isidoro, and to seek pursuant to Isidoro's wishes and rights his immediate return to the United States." Compl. at

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[3]The defendants named in Rodriguez's original complaint include: the National Center for Missing and Exploited Children, Ernie Allen, Nancy Hammer, Guillermo Galarza, Proskauer Rose LLP, Warren L. Dennis, Susan Brinkerhoff, Miles & Stockbridge LLP, Stephen J. Cullen, Patrick H. Stiehm, Mary B. Marshall, Robert McCannell, Knute E. Malmborg, and John Does 1-20, in their individual capacity, the Office of Children Issues, the Office of Legal Advisor for Consular Affairs, U.S. Department of State, an unknown number of unnamed and unknown employees of the United States, in their official and individual capacities, the United States Department of State, and the United States of America. For simplicity, the named defendants are categorized herein as either "federal defendants" or "private defendants." Collectively, however, they are referred to as simply "defendants."

p. 38. During the pendency of his case, Rodriguez filed an amended complaint, adding numerous additional defendants, including every court and the majority of judges who had ruled on his previous federal and state filings. He likewise moved to disqualify Judge Richard W. Roberts, the district judge assigned to his case, pursuant to 28 U.S.C. § 455 (2000).

The district court granted the defendants' motion to dismiss the original complaint under Federal Rule of Civil Procedure 12(b) for lack of subject matter jurisdiction and for failure to state a claim upon which relief may be granted. Rodriguez v. Nat'l Ctr. for Missing & Exploited Children, et. al., No. 03-120, slip op. at 13 (D.D.C. Mar. 31, 2005). First, as to Rodriguez's constitutional claim, the district court held that the federal defendants are immune from suit based upon the doctrine of sovereign immunity. Id. at 19-20. It also held that the private defendants are not proper defendants under the Constitution, citing Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971). Id. at 21-25.

Second, the district court found that the United States did not waive its sovereign immunity for Rodriguez's tort claim. Id. at 31. It also observed that of all of the torts he alleged, Rodriguez presented only a claim for intentional infliction of emotional distress ("IIED")at the agency level, a prerequisite for litigating a tort claim under the FTCA. Id. at 32. The district court thus limited its consideration of Rodriguez's tort claim to this one cause of action and held that he failed to allege any facts showing outrageous conduct on the part of the remaining defendants, an essential element of an IIED claim. Id. at 34-35.

Third, the district court held that Rodriguez's civil rights claims against the federal defendants are barred by the

doctrine of sovereign immunity. Id. at 36. As to the private defendants, the district court held that Rodriguez did not allege facts sufficient to show that the private defendants conspired to violate either Rodriguez's or Isidoro's civil rights based on a discriminatory animus directed at U.S. Hispanic males. Id. at 37-39.

Finally, since the United States District Court for the Eastern District of Virginia had issued an order requiring that Isidoro return to Colombia, the district court found that Rodriguez failed to show a "clear and indisputable" right to a writ of mandamus. Id. at 39. It likewise concluded that both Rodriguez's motion to disqualify and his amended complaint were "nothing more than a transparent attempt at judge-shopping and forum-shopping." Id. at 42. Consequently, the district court denied both the petition for writ of mandamus and the motion to disqualify and struck Rodriguez's amended complaint.

Because the original complaint was dismissed under Rule 12(b), the district court entered final judgment, dismissing the entire action. On May 23, 2005, Rodriguez timely appealed.

## II. DISCUSSION

The appellees argue that summary affirmance is appropriate because the district court correctly held that even accepting Rodriguez's well-plead allegations as true, they did not engage in a conspiracy to deprive Rodriguez and Isidoro of their constitutional or civil rights or to commit a tortious act against either of them. Rodriguez responds by asserting that summary affirmance must be denied because "the ongoing deprivation of [Rodriguez's and Isidoro's rights to impartial access to both federal and Virginia courts to seek redress of the ongoing obstruction with Rodriguez's substantive

parental rights" violates the constitution and federal statute. Resp. for Appellees at 9. As Rodriguez and Isidoro have had ample access to the courts, Rodriguez's argument is unresponsive to the motion for summary affirmance. On the merits, he appears to assert that he and his son are being wronged, rather than why the trial court's dismissal or any other ruling constitutes reversible error.

A.

We conclude that the district court correctly found that the United States, its agencies, and officials are immune from suit under the doctrine of sovereign immunity as to Rodriguez's constitutional, tort, and civil rights claims. See United States v. Testan, 424 U.S. 392, 399 (1976). Here, Congress did not waive the United States's sovereign immunity with respect to Rodriguez's constitutional claim. See Clark v. Library of Congress, 750 F.2d 89, 103 n.31, 104 (D.C. Cir. 1984). Nor did Congress waive the United States's sovereign immunity with respect to Rodriguez's tort claim, see FDIC v. Meyer, 510 U.S. 471, 477-78 (1994), or his statutory civil rights claims, see Hohri v. United States, 782 F.2d 227, 245 (D.C. Cir. 1986). Consequently, the district court properly dismissed all Rodriguez's claims against the federal defendants for lack of subject matter jurisdiction.

B.

As to the private defendants, we address each cause of action in turn, beginning with Rodriguez's allegation of a civil conspiracy to violate Rodriguez's and Isidoro's constitutional rights. We agree with the district court that the private defendants cannot be liable for such a conspiracy because they were not acting under the color of law. See Browning v. Clinton, 292 F.3d 235, 250 (D.C. Cir. 2002).

("Critical to a successful Bivens claim, of course, [the defendants] must have acted 'under color of [federal] authority.'" (quoting Bivens, 403 U.S. 388, 389 (1971) (alteration in original))). Rather, the private defendants acted as private entities. Indeed, Rodriguez's complaint, as the district court noted, does not even allege that any of the private defendants acted under color of law. As such, Rodriguez's constitutional claim against the private defendants was correctly dismissed by the district court for lack of subject matter jurisdiction.

With respect to Rodriguez's tort claim, he particularly alleges that the private defendants violated Isidoro's and his rights to the "society and companionship in the father/son relationship, access to the courts of the Commonwealth of Virginia, constitute an illegal shanghaiing of Isidoro from the United States, negligent supervision, intentional infliction of emotional distress, violation of freedom to petition the government, falsification of official documents, and an invasion of privacy." Compl. ¶141. Of these claims, the district court correctly noted that Rodriguez, pursuant to 28 U.S.C. § 2675(a) (2000), only presented his claim for intentional infliction of emotional distress to the United States Department of State, the appropriate administrative agency. See Compl. ¶ 142. His claim was denied in 2002, thus allowing the present tort claim. The district court also correctly found that Rodriguez's original complaint was devoid of any factual allegations reflecting egregious conduct, let alone outrageous or atrocious conduct, on the part of the private defendants. See Brownino, 292 F.3d at 248 (The tort of intentional infliction of emotional distress "requires conduct so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.") (quotations and citations omitted). We thus conclude that the district court

properly dismissed Rodriguez's tort claim for failure to state a claim.

Finally, we conclude that the district court properly dismissed Rodriguez's civil rights claims against the private defendants for failure to state a claim. To prove a conspiracy in violation of § 1985(3), a plaintiff must show, inter alia that "some racial, or perhaps otherwise class-based, invidiously discriminatory animus [lay] behind the conspirators' action." Bray v. Alexandria Women's Health Clinic, 506 U.S. 263, 268 (1993) (citations and quotations omitted). Here, even under the most liberal interpretation of the original complaint, Rodriguez did not allege any facts, which if true, would show that the private defendants conspired against either Rodriguez or Isidoro because they are Hispanic males living in the United States. In his original complaint, Rodriguez merely alleges: "Defendants conspired against Plaintiffs . . . based on invidious discriminatory animus against Rodriguez and Isidoro as U.S. citizens Hispanic men." Compl. ¶ 145. This allegation is merely a bald assertion; it plainly fails to connect the private defendants' alleged actions against Rodriguez and Isidoro with the latters' status as U.S. Hispanic males. Moreover, since a colorable claim under § 1985 is a prerequisite to a claim under § 1986, Mollnow v. Carlton, 716 F.2d 627, 632 (9th Cir. 1983), the district court properly dismissed Rodriguez's derivative § 1986 claim.

C.

The district court correctly denied Rodriguez's petition for a writ of mandamus. Pursuant to the Mandamus Act, 28 U.S.C. § 1361 (2000), a district court may grant mandamus relief if "(1) the plaintiff has a clear right to relief; (2) the defendant has a clear duty to act; and (3) there is no other adequate remedy available to the plaintiff." Power v.

Barnhart, 292 F.3d 781, 784 (D.C. Cir. 2002) (quoting N. States Power Co. v. Dep't. of Energy, 128 F.3d 754, 758 (D.C. Cir. 1997)). Rodriguez cannot show a clear right to relief under any of the facts alleged in his complaint or reasonable inferences to be drawn therefrom. See Kerr v. U.S. Dist. Court for N. Dist. of Cal., 426 U.S. 394, 402 (1976) (citations and quotations omitted). On the contrary, as the district court noted, Isidoro presently resides in Colombia with his mother as a result of the order of the Eastern District of Virginia. See Hazbun Escaf v. Rodriguez, 200 F. Supp. 2d 603 (E.D. Va. 2002), affirmed, Hazbun Escaf v. Rodriguez, 52 Fed. Appx. 207 (4th Cir. 2002). Rodriguez and Isidoro have had the opportunity to fully adjudicate the merits of their child custody dispute in court; they simply are dissatisfied and disagree with the result. Accordingly, the district court was correct in holding that Rodriguez could not show a clear and indisputable right to a writ of mandamus.

D.

The district court did not abuse its discretion when it denied Rodriguez's motion to disqualify the district judge or when it struck his amended complaint. As the district court noted, Rodriguez's amended complaint mirrored his original complaint with the addition only of new governmental defendants, including the United States District Court for the District of Columbia and Judge Roberts, and new conspiracy-based causes of action. Notably, Rodriguez made his filings after the defendants filed a motion to dismiss the original complaint and after Judge Roberts declined to recuse himself from the case. In light of the chronology of events, we can only infer that Rodriguez sought to delay any decision on the defendants' motion to dismiss. We thus agree with the district court that Rodri-

guez's motion and his amended complaint reflect an improper attempt to forum-shop and judge-shop.

## III. CONCLUSION

Accordingly, for the reasons set forth herein, the district court's judgment of dismissal is summarily affirmed.

United States Court of Appeals Of for the District of Columbia Circuit

No-05-5130

Dated: August 1, 2005

*In re* Isidoro Rodriguez, Esq., and as Father and next of friend of his 16 year old son Isidoro Rodriguez-Hazbun, and Isidoro Rodriguez-Hazbun,

Petitioners

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05-5202

Isidoro Rodriguez, Esq., Father Isidoro Rodriguez-Hazbun, a minor and Isidoro Rodriguez-Hazbun,

Appellants

v.

National Center for Missing & Exploited Children, et al.,

Appellees

ORDER

It is ORDERED, on the court's own motion, that the above cases be consolidated.

For the Court
Mark J. Lagger, Clerk
By s/_____
Linda Jones
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

| | | |
|---|---|---|
| ISIDORO RODRIGUEZ, *et al.*, | : | |
| | : | |
| Plaintiffs, | : | Civil Action |
| | : | No 03-CV-00120 |
| v. | : | (RWR) |
| | : | |
| THE NATIONAL CENTER FOR MISSING & EXPLOITED CHILDREN, *et al.*, | : | |
| | : | |
| Defendants. | : | |
| | : | |

ORDER

For the reasons set forth in the accompanying Memorandum Opinion, it is hereby

ORDERED that defendants' motion to dismiss [63, 65] be, and hereby are, GRANTED. The complaint is DISMISSED. It is further

ORDERED that the plaintiffs' m .on for writ of mandamus [47] be, and hereby is, DENIED. It is further

ORDERED that plaintiffs' motions to disqualify [128, 132] ve, and hereby are, DENIED, and the amended complaint is STRICKEN., It is further

ORDERED that all remaining motions [120, 121, 130, 133] be and hereby are, DENIED as moot.

This is a final, appealable order

SIGNED this 21st day of March, 2005.

/s/

RICHARD ROBERTS
United States District Judge

Fairfax County Juvenile and
Domestic Relations District Court

To: Judge Mann Case No(s): JJ347050-01-03

From: Clerk's Office

Date: Jan. 21, 2005 Case Name: Rodriguez-Hazbun, Isidoro

Isidoro Rodriguez (Father) is appealing the following:
o Visitation
_____/s/_____
Isidoro Rodriguez

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Bond Information

Juvenile Cases Only
Other: This is not an appealable order.
Date: Jan. 21, 2002 _____/s/_____
Judge Thomas Mann

*VIRGINIA*:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday the 18th day of August, 2004.

ISIDORO RODRIGUEZ-HAZBUN

Appellant.

v. Record No. 041702
Court of Appeals No3247-03-4

AMALIN HAZBUN ESCAF

Appellee.

From the Court of Appeals of Virginia

Upon consideration of the record and pleadings filed herein, the Court is of opinion that Isidoro Rodriguez lacks standing in this matter because he has no authority to sue in his son's name. Accordingly, the petition for appeal filed in this case is dismissed.

A Copy
Teste:
/s/
Clerk

United States Court of Appeals for the District of Columbia Circuit
No-03-5092

Dated: July 1, 2003

*In re* Master Isidoro Rodriguez-Hazbun, fourteen-year-old son of Isidoro Rodriguez, Esq., and Isidoro Rodriguez, Esq. Father of Isidoro Rodriguez-Hazbun, a minor,

Petitioners

BEFORE: Ginsburg, Chief Judge, and Edwards, Sentelle, Henderson, Randolph, Rogers, Tatel, Garland, and Roberts, Circuit Judges

ORDER

Upon consideration of petitioners' petition for rehearing en banc, it is

ORDERED that the petition be denied.

Per Curiam

For the Court
Mark J. Lagger, Clerk
By s/_____
Michael c. McGrail
Deputy Clerk

United States Court of Appeals for the District of Columbia Circuit
No-03-5092

Dated: May 28, 2003

*In re* Master Isidoro Rodriguez-Hazbun, fourteen-year-old son of Isidoro Rodriguez, Esq., and Isidoro Rodriguez, Esq. Father of Isidoro Rodriguez-Hazbun, a minor,

Petitioners

BEFORE: Ginsburg, Chief Judge, and Edwards and Randolph, Circuit Judges

ORDER

Upon consideration of the petition for a writ of mandamus, and the motion to expedite consideration of the petition, it is

ORDERED that the petition be denied. To the extent petitioner seeks a writ of mandamus to be issued by the district court, petitioner has not demonstrated a "clear and indisputable" right to relief and that "no other adequate means to attain the relief" exist. In re Sealed Case No. 98-3077, 151 F.3d 1059, 1062-63 & n. 4 (D.C. Cir. 1998)(citations omitted). In deed, to attain the relief he seeks from the district court to amend the docket to reflect pending civil action, petitioner may move the district court to amend the docket to reflect that such action was brought my petitioner both individually and on behalf of his minor son. To the extent petitioner seeks a writ of mandamus to be issued to the Department of State, it is well-settled that such request be brought before the district court in the first

instance. See Telecommunication Research & Action Ctr. v. FCC, 750 F.2d 70, 77 (D.C. Cir. 1984). It is

FURTHER ORDERED that the motion to expedite be dismissed as moot.

Per Curiam
S/_____

Ref No. 23.833(CUSTODY AND VISIT REGULATION) FIRST FAMILY COURT ROOM, BARRANQUILLA, COLOMBIA, August 26, 1997

Mrs. Mabel Castro-Palacio-Defendant's Attorney in the process for custody and visit regulations initiated by Mrs. Amalin Hazbun, against Mr. Isidoro Rodriguez Cruz, in favor of minor Isidoro Rodriguez Hazbun, requests this Court to add the present document to the record of the hearing attended on August 1st, 1997, raised with basis on the conciliation that the parties arrived at, in order to determine clearly and expressly, that the custody of the above mentioned minor will be shared by the parents, since this was the basic point for the conciliation.

The Court, in order to resolve the petition of the Defendant's Attorney, refers to the statement of the Defendant, which was literally written down and is hereby transcribed in its relevant portion, so that this Court may take the corresponding decision. Mr. Rodriguez-Cruz states in the aforementioned document:

"[I propose Joint Custody of my son ISIDORO RODRIGUEZ HAZBUN in the following manner:] That his mother Mrs. Amalin Hazbun Escaf keep him under her personal care but that both parents share the right for the education, and the moral and intellectual up-bringing of our son. As for the visits, I propose to take my son Isidoro Rodriguez-Hazbun on Fridays every fortnight at school's exit hour, in order to spend the weekend together, and to take him back to his mother on Sunday at seven p.m. or on Monday if it is a holiday, with his home work done, and with his complete luggage. On weekdays, that is, form Monday to Friday, I commit myself to take my son ISIDORO to his additional lessons, then take him and stay with him until seven o'clock p.m., at weeks when he will spend the

night over, this is to say, once a week. At weeks when he will not spend the night, apart from taking him from the above mentioned additional lessons, I will take him to his soccer lessons once a week until seven p.m., meaning that week there will be two visiting days on working days."

From the foregoing transaction, it is clearly observed that the mother of the minor Isidoro, retains the child's custody, and therefore there is no need to make any clarification thereto.

It would be otherwise if Mrs. Amalin Emilia Hazbun-Escaf had not complied with the conciliation terms stated in the document alluded by Mrs. Mabel Castro, in which case strict compliance would be requested to the Court, and Mrs. Hazbun-Escaf penalized accordingly.

Notify and comply

s/_____

LUZ MYRIAM REYES CASAS, Judge

s/_____

Serra Newman, Certified Translator, Lic. Ministry of Justice, Bogota Colombia, March 25, 1988 (23/0701).

HEARING BEFORE FIRST FAMILY COURT OF BARRANQUILLA, COLOMBIA
PROCESS: CUSTODY AND PERSONAL CARES
PLAINTIFF: AMALIN HAZBUN ESCAF
DEFENDANT: ISIDORO RODRIGUEZ CRUZ
MINOR: 1

In Barranquilla, on August first (1st) of Nineteen Ninety Seven (1997), during public hearing at the First Family Court, the Honorable Judge declares open the hearing in this process of CUSTODY AND PERSONAL CARES of AMALIN HAZBUN ESCAF vs. ISIDORO RODRIGUEZ CRUZ, on behalf of minor ISIDORO RODRIGUEZ HAZBUN. It is confirmed that both parties are present and their attorneys. At this stage of the hearing the Honorable Judge advice the parties to present an agreement or conciliation formula.

Defendant Mr. ISIDORO RODRIGUEZ speaks and says:

I propose the Joint Custody of my son ISIDORO RODRIGUEZ HAZBUN in the following manner:

That the mother AMALIN EMILIA HAZBUN ESCAF have him her personal cares but both parents share the rights of correction, moral and intellectual education of our minor child.

Regarding visitations: I propose to pick up my son ISIDORO RODRIGUEZ HAZBUN every fifteen days at the end of school day on Friday for him to stay with me all that weekend, taking him back on Sunday at 7 pm to the house of his mother or on Monday if it is holiday, with his homework done and his complete luggage. During the week days, this is Monday through Friday, I will pick up my son

ISIDORO to take him to classes with the additional teacher assigned, and will pick him up at the class and continue with him until 7 pm, this when in that week it correspond to me his visitation spending the night with me, this is once a week. When there is no visitation spending night with me besides picking him up on the day of the above noted classes I will pick him up on the day he has football classes once a week until the same hour, that means that in that week there will be two visitation days on week days. I want to add that in the case that for any circumstances there is not football class or writing class with the teacher, he will be with me anyway two working days in the week and in the other week one working day and will spend the week-end with me.

Vacations will be shared as follows: The child will spend one year Carnivals with a parent and Holy Week with the other, mid year vacation since are longer jointly parents agree (.....) fifteen days with the mother. The end of year vacation this year the first fifteen days will be with the father permitting that if the minor is still with him for December 31st spend that date with his mother and go back with him to finish the vacation and this situation of the end of year vacation will alternate annually keeping always the spirit of sharing one of the two special dates of December 24 and 31st of each year. No discussion fathers' day he will spend it with his father and mothers' day with his mother. Regarding birthday of the child ISIDORO we will celebrate it jointly the parents with our son, making it clear that next celebration will be made by me.

Ms. AMALIN HAZBUN takes the word and states: I am totally in agreement with the formula offered by the defendant. The Honorable Judge takes the word to say. Since the parties have arrived to an agreement about the

totality of the litigation, being such agreement in accordance with the law, it is approved and this process finished.

It is just confirmed that at the non-compliance with the agreed hereby it will be applied by express statement of num. 4 of art. 350 of the Minor Code the sanctions provided on article 72 ibidem.

No costs in this process. It is signed by all those who have intervened. The parties wish to clarify that just for year 1988 the mother will have the minor during Carnivals as well as Holy Week.

The Judge:
s/_____
LUZ MYRIAM REYES CASAS, Judge
Plaintiff:
s/_____
AMALIN HAZBUN ESCAF
Defendant:
s/_____
ISIDORO RODRIGUEZ CRUZ
Attorney for Plaintiff
s/_____
LUZ MYRIAM SANCHEZ DE CARVAJAL
Attorney for Defendant
s/_____
MABEL CASTRO PALACIO
The Court Clerk
s/_____
ELVIA MAZA DE CANTILLO
s/_____
Serra Newman, Certified Translator, Lic. Ministry of Justice, Bogota Colombia, March 25, 1988-23/07/01